



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address : COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/940.203	09/29/97	POSSIDENTO	W

IM61/1227
LAW OFFICES OF JOHN P HALVONIK
806 W DIAMOND AVENUE
SUITE 301
GAITHERSBURG MD 20878

EXAMINER	
MANOHARAN, V	
ART UNIT	PAPER NUMBER
1764	18

DATE MAILED:

12/27/00

NOTICE OF ABANDONMENT

This application is abandoned in view of:

- ☒ Applicant's failure to respond to the Office letter, mailed 8/29/00.
- ☐ Applicant's letter of express abandonment which is in compliance with 37 C.F.R. 1.138.
- ☒ Applicant's failure to timely file the response received 12/1/00 within the period set in the Office letter.
- ☐ Applicant's failure to pay the required issue fee within the statutory period of 3 months from the mailing date of _____ of the Notice of Allowance.

- ☐ The issue fee was received on _____.
- ☐ The issue fee has not been received in Allowed Files Branch as of _____.

In accordance with 35 U.S.C. 151, and under the provisions of 37 C.F.R. 1.316(b), applicant(s) may petition the Commissioner to accept the delayed payment of the issue fee if the delay in payment was unavoidable. The petition must be accompanied by the issue fee, unless it has been previously submitted, in the amount specified by 37 C.F.R. 1.17 (l), and a verified showing as to the causes of the delay.

If applicant(s) never received the Notice of Allowance, a petition for a new Notice of Allowance and withdrawal of the holding of abandonment may be appropriate in view of *Delgar Inc. v. Schuyler*, 172 U.S.P.Q. 513.

- ☐ Applicant's failure to timely correct the drawings and/or submit new or substitute formal drawings by _____ as required in the last Office action.
☐ The corrected and/or substitute drawings were received on _____.

- ☐ The reason(s) below.

Virgin
12/12/00

Art Unit: 1764

1. Applicant's reply to the Office action of 08-29-00 was received in the Patent and Trademark Office on 12/01/00, which is after the expiration of the period for reply set in the last Office action. Since no time remains for applicant to obtain an extension of the period for reply by filing a petition under 37 CFR 1.136(a), this application is *abandoned*.

Applicant is advised that the abandonment of this application may only be overcome by filing a petition to revive under 37 CFR 1.137. A petition to revive may be appropriate if applicant's failure to reply was either unavoidable or unintentional, as set forth below.

A. Failure to reply was unavoidable.

A petition to revive an abandoned application on the grounds that the failure to reply was unavoidable (37 CFR 1.137(a)) must be accompanied by: (1) the required reply (which has been filed); (2) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; (3) any terminal disclaimer required pursuant to 37 CFR 1.137(c); and (4) the petition fee as set forth in 37 CFR 1.17(l). No consideration to the substance of a petition will be given until this fee is received.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable, as well as inadvertent. This must include: (1) a satisfactory showing that the cause of the delay resulting in failure to reply in timely fashion to the

Art Unit: 1764

Office action was unavoidable; and (2) a satisfactory showing that the cause of any delay during the time period between abandonment and filing of the petition to revive was also unavoidable.

A terminal disclaimer and the terminal disclaimer fee is required under 37 CFR 1.137(c) if the application is: (1) a design application, (2) a utility application filed before June 8, 1995, or (3) a plant application filed before June 8, 1995. The terminal disclaimer must dedicate to the public a terminal part of the term of any patent granted the application equivalent to the period of abandonment of the application, and must also apply to any patent granted on any application containing a specific reference under 35 U.S.C. 120, 121 or 365(c) to the application for which revival is sought.

B. Failure to reply was unintentional.

A petition to revive an abandoned application on the grounds that the failure to reply was unintentional (37 CFR 1.137(b)) must be accompanied by: (1) the required reply (which has been filed); (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; (3) any terminal disclaimer required pursuant to 37 CFR 1.137(c) (see above discussion); and (4) the \$ petition fee as set forth in 37 CFR 1.17(m). No consideration to the substance of a petition will be given until this fee is received. The Commissioner may require additional information where there is a question whether the delay was unintentional.

Art Unit: 1764

The required items and fees must be submitted promptly under a cover letter entitled "Petition to Revive."

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: One Crystal Park, Suite 520
2011 Crystal Drive
Arlington, VA

Telephone inquiries with respect to this matter should be directed to the Office of Petitions Staff at (703) 305-9282.

Applicant is advised of the following:

Art Unit: 1764

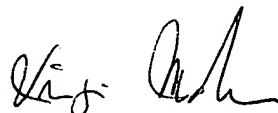
Even though the the period for response is restarted seven days from 8/29/00 to 9/6/00, as requested, still the case is abandoned because the request was made on Dec. 1, 2000.

“No extension fees would be required since the reply puts the application in condition for allowance except for the correction of formal matters” See MPEP 706.07(N).

Any inquiry concerning this communication should be directed to Virginia MAnoharan at telephone number (703) 308-3844.

VM

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